

2008

Kay Lynn Hansen v. Steven L. Hansen : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH SUPREME COURT

KAY LYNN HANSEN,)	
)	BRIEF OF THE PETITIONER
Plaintiff/Respondent,)	
vs.)	
)	Supreme Court No. 20090556-SC
STEVEN L. HANSEN,)	Appellate Court No. 20080747-CA
)	
Defendant/Petitioner.)	Trial Court No. 03490024

ON A GRANT OF CERTIORARI
THIS IS AN APPEAL FROM THE UTAH COURT OF APPEALS'
DETERMINATION AND APPLICATION OF § 78B-12-108

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STATEMENT OF JURISDICTION

The Utah Supreme Court has appellate jurisdiction in this matter pursuant to § 78A-3-102(3)(a) U.C.A. On June 11, 2009, the Utah Court of Appeals entered its Memorandum Decision in this case. The Petitioner sought certiorari review pursuant to Rule 45 of the Utah Rules of Appellate Procedure, which was granted by the Utah Supreme Court on October 14, 2009.

STATEMENT OF ISSUES GRANTED FOR REVIEW

Certiorari review was granted on two issues in this case:

I. Issue: Whether Utah Code Ann. § 78B-12-108 (1) requires that child support payments be redirected in this case.

Standard of Review: The interpretation and application of a statute is a question of law reviewed for correctness. *Sindt v. Retirement Bd.*, 157 P.3d 797 (Utah 2007). On certiorari review of a question of law, no deference is given to the lower court's decision, which is reviewed for correctness. *Iron Head Const. Inc. v. Gurney*, 207 P.3d 1231, ¶ 7 (Utah 2009).

Presentation for Review: The above issue was raised in the Petition for Writ of Certiorari in Arguments I & II, wherein the Petitioner requests this Court to determine whether or not under § 78B-12-108 (1) the support payments should follow the child, in this case.

II. Issue: whether the district court and court of appeals erred in construing and/or applying the provisions of Utah Code Ann. § 78B-12-108 (2) in this case.

Standard of Review: The interpretation and application of a statute is a question of law reviewed for correctness. *Sindt v. Retirement Bd.*, 157 P.3d 797 (Utah 2007). On certiorari review of a question of law, no deference is given to the lower court's decision, which is reviewed for correctness. *Iron Head Const. Inc. v. Gurney*, 207 P.3d 1231, ¶ 7 (Utah 2009).

Presentation for Review: The above issue was raised in the Petition for Writ of Certiorari in Argument III, wherein the Petitioner requests this Court to determine whether or not the court of appeals properly applied § 78B-12-108 (2) in affirming the district court's decision not to direct the support payments to follow the child, in this case.

STATUTE OF CENTRAL IMPORTANCE

The determinative statute in this case was recently renumbered in 2008, as §78B-12-108 U.C.A, it provides as follows:

§ 78B-12-108. Support follows the child.

(1) Obligations ordered for child support and medical expenses are for the use and benefit of the child and shall follow the child.

(2) Except in cases of joint physical custody and split custody as defined in Section 78B-12-102, when physical custody changes from that assumed in the original order, the parent without physical custody of a child shall be required to

pay the amount of support determined in accordance with Sections 78B-12-205 and 78B-12-212, without the need to modify the order for:

- (a) the parent who has physical custody of the child;
- (b) a relative to whom physical custody of the child has been voluntarily given; or
- (c) the state when the child is residing outside of the home in the protective custody, temporary custody, or custody or care of the state or a state-licensed facility for at least 30 days.

STATEMENT OF THE CASE

Nature of the Case: This case involves the issue of child support and a father's Motion to direct his child support payments to follow his child, Jessica Hansen, to the Volunteers of America Utah Transition Home ("Volunteers of America"), where it is undisputed that Jessica has resided, since October of 2007.

On October 1, 2006, the mother Kay Lyn Hansen kicked Jessica Hansen out of her home. Jessica at that time went to live with grandparents and then bounced around spending time in Utah Juvenile Detention, grandparents, and other family members. On July 18, 2007, Jessica entered the Volunteers of America Utah Transition Home. (Rec. 221) On August 17, 2007 Jessica left the Volunteers of America for a short time, but returned on October 9, 2007, and has remained there since. She has not lived with her mother since October of 2007. (Rec. 221)

Course of Proceedings and Disposition Below: On or about November 8, 2006, the father, Steven L. Hansen, filed a Petition to Modify the Divorce Decree to grant

him physical custody based on a number of grounds, including the fact that the child was kicked out of her home by her mother and that she no longer lived with her mother, but was residing at Volunteers of America. (Rec. 184-186). The Petition to Modify further sought a change in the child support award to make it consistent with the Utah State Guidelines. (Rec. 186).

Due to the fact that the child was not living with her mother, but was residing at Volunteers of America; on April 25, 2008, the father filed a Motion to Direct Child Support to Volunteers of America pursuant to § 78B-12-108 (1), with a Memorandum in support. (Rec. 217-224). This motion was filed so that the support payments would be used for the benefit of the child under § 78B-12-108 (1) and not the mother, who was no longer living with the child and was no longer providing primary care for the child. (Rec. 221).

On May 15, 2008, a hearing was held before Commissioner Evans for oral argument. (See Rec. 255, Trans. of hearing dated 5/15/08). At the hearing the father argued that since the child has changed residence and is no longer living with the mother; the payment of child support to the mother, is not “following the child” and is contrary to the clear language in the Statute, § 78B-12-108 (1). (Rec 255, Trans. pg. 5). At the hearing mother’s counsel conceded that the child is no longer living with the mother and stated that, “she’s not going to, you know, put a rope around her neck and yank her home.” (Rec. 255, Trans. pg. 7). There was no evidence presented at the hearing (which

was strictly oral argument) of any monies paid by the mom for clothing, school registration, or for any other expenses; and it was pointed out to the Commissioner that if the mom is incurring such medical expenses they can be divided by the parties pursuant to statute. (Rec. 255, Trans. pg. 9) The Office of Recovery Services did not oppose the motion, but merely requested an order from the court before paying Volunteers of America. (Rec. 255, Trans. pg. 8).

At the conclusion of the hearing, counsel for the mother again stated that the child is no longer living with the mother, but is instead residing with Volunteers of America, and that the Office of Recovery Services was unsure whether or not Volunteers of America was a State organization so the funds could be automatically redirected to them under Subsection (2) of the Statute. (Rec. 255, Trans. pg. 10).

After oral argument, the Commissioner ruled that he found no ambiguity in the statute, and stated, “that if non-state agencies were intended to be included, they would be. They’re not. So, my recommendation is that the motion be denied in its entirety and the State be admonished to pay the sums over to the mother.” (Rec. 255, Trans. pg. 11). The Commissioner made this ruling while acknowledging that the child is no longer residing with the mother. (Rec. 255, Trans. pg. 11). There was no evidence presented, or hearing held, on the father’s outstanding Petition to Modify the Divorce Decree, which was previously filed with the court.

On May 29, 2008, Steven Hansen filed an Objection to the Commissioner's Recommendation, claiming that the provisions under § 78B-12-108 (2) allowing an automatic redirection of child support, without a court order, should not be applied in this case to prevent the support payments from following the child under § 78B-12-108 (1). (Rec. 239-242) On June 12, 2008, a response was filed to the Objection; and on June 24, 2008, Judge Lindberg, without further hearing, issued a Minute Entry overruling the Objection and affirming Commissioner Evans' ruling. (Rec. 243-244) Judge Lindberg did not hold a hearing and made no ruling on the father's Petition to Modify the Divorce Decree, which was previously filed with the court.

On July 23, 2008, the Notice of Appeal was filed (Rec. 247-248) appealing the trial court's denial of the father's Motion to direct the support payments to follow the child; claiming that the trial court misinterpreted § 78B-12-108 (1) and further misapplied § 78B-12-108 (2) in denying the Motion, as Subsection (2) merely provides an automatic redirection of child support payments, without a court order, and is not intended to limit the clear mandate in Subsection (1).

The Utah Court of Appeals reviewed the trial court's interpretation and application of § 78B-12-108 (1) and (2), and on June 11, 2009, issued its Memorandum Decision, affirming the district court's denial of the father's Motion to have the support payments to follow the child pursuant to § 78B-12-108 (1). (See Memorandum Decision, Exhibit "B" in Addendum).

The Utah Court of Appeals, despite the undisputed fact that the child no longer resides with the mother, states in its decision, that the mother has not lost physical custody for purposes of applying § 78B-12-108 (1) to allow the support payment to follow the child. The court of appeals ruled that physical custody was not lost because although the child has left the home, the mother may remain liable for some of the child's future expenses, and the child is free to visit. (See Memorandum Decision, Ex. "B" pg. 2). The appellate court further concludes that Volunteers of America is not a state agency, falling under § 78B-12-108 (2) (a) - (c). (See Memorandum Decision, Ex. "B" pg. 2, footnote 2).

On July 10, 2009, the father filed a Petition for Writ of Certiorari to this Court, which was granted on October 14, 2009, as to two issues:

1. Whether Utah Code Ann. § 78B-12-108 (1) requires the child support payments be redirected in this case; and
2. Whether the district court and court of appeals erred in construing and/or applying the provisions of § 78B-12-108 (2) in this case.

STATEMENT OF FACTS

1. The parties' minor daughter, Jessica Hansen, was kicked out of the mother's home on or about October 1, 2006 to live with her grandparents. After bouncing around with grandparents, other family members, and a State facility, she entered the Volunteers of America Utah Transition Home, on July 18, 2007. (Rec. 221)

2. Jessica Hansen left Volunteers of America upon the request of the mother, Kay Lynn Hansen, on August 17, 2007, but soon returned to Volunteers of America on October 9, 2007; and has remained there since. (Rec. 221)

3. Jessica Hansen has not resided with her mother, Kay Lynn Hansen, since October 9, 2007. (Rec. 221).

SUMMARY OF ARGUMENT

Statute 78B-12-108 (1) provides that support obligations ordered for child support and medical expenses are for the use and benefit of the child and *shall* follow the child. In this case, it is undisputed that the child is no longer residing with her mother, and has not lived with her mother since October of 2007. It is the residence and need of the child that should be determinative under § 78B-12-108 (1); not whether one of the parents may remain liable to support their child. Furthermore, the Petitioner as the father, is also liable to support the child; and both parents will continue to remain liable under Utah Statute. § 78B-12-105 (1) & (2) (a) - (b).

Under the clear language of § 78B-12-108 (1) the child support payments in this case, should have followed the child to Volunteers of America, and not stay with the mother, because she may remain liable for future expenses, or because she can visit the child. Statutes are to be construed according to their plain language. *LKL Associates, Inc. v Farley*, 94 P.3d 279, 281(Utah 2004). Under § 78B-12-108 (1) it is clear that obligations ordered for child support and medical expenses are for the use and benefit of

the child and *shall* follow the child. (emphasis added). Thus, child support obligations are not for the benefit of a parent, and are not to remain with the parent after the child has left, merely because that parent may be liable for future expenses. If this was the intent of the legislature, the Statute could have easily been written to provide that the child support obligations *do not follow the child*, but are for the *use and benefit of the parents* and are to remain with the parent, so long as that parent may be liable for some of the child's future expenses, or if the child is free to visit. The Statute does not provide this and the rulings by the lower courts in this case, not only add words changing the meaning of the Statute, but add words directly contrary to what the Statute specifically provides.

To follow the plain language of § 78B-12-108 (1) since it was undisputed that the child is no longer living with her mother, but is residing at the Volunteers of America Transition Home; the district court should have ruled that the child support obligation should follow the child to Volunteers of America, where the child has been residing, and not be paid to the mother, who is no longer providing the primary care for the child. The court of appeals in conducting its review of the district court's interpretation and application of this Statute, under a correctness standard; should not have affirmed the trial court's denial, but should have reversed the ruling and directed the district court that the child support payments should follow the child to Volunteers of America, pursuant to § 78B-12-108 (1).

The application of § 78B-12-108 (2) (the automatic redirection of child support) by the district court in denying the father's Motion to Direct Child Support to Volunteers of America, and the court of appeals' affirmation of such denial; when it is undisputed that the child has been residing with Volunteers of America since October of 2007, is in error and contrary to §78B-12-108 (1) which requires the support obligation to follow the child.

Furthermore, the district court, and the appellate court in its review, erred in applying the limited exceptions listed in § 78B-12-108 (2). Subsection (2) and the persons and entities listed thereunder, deal with persons or entities to whom support payments may be automatically redirected, without a court order. It is not meant to invalidate, limit, or re-write Subsection (1) which clearly provides that the support obligations are for use and benefit of the child and *shall* follow the child.

If such was the intent, then Subsection (1) could have easily been written to provide that child support obligations shall follow the child if, and only if, the child is in custody of the persons and/or entities listed in Subsection (2) (a)-(c). Subsection (1) of the Statute does contain such a limitation.

The father, in this case, is entitled to have his support obligations follow his child as provided under § 78B-12-108 (1). The district court and the court of appeals erred in their interpretation of § 78B-12-108 (1) in preventing this from happening; and erred in their application of Subsection (2), to prevent the child support from following

the child under § 78B-12-108 (1).

ARGUMENT

I. THE CHILD SUPPORT OBLIGATION IN THIS CASE SHOULD FOLLOW THE CHILD PURSUANT TO § 78B-12-108 (1) U.C.A.

The determinative statute in this case is § 78B-12-108, it provides as follows:

§ 78B-12-108. Support follows the child.

(1) Obligations ordered for child support and medical expenses are for the use and benefit of the child and shall follow the child.

(2) Except in cases of joint physical custody and split custody as defined in Section 78B-12-102, when physical custody changes from that assumed in the original order, the parent without physical custody of a child shall be required to pay the amount of support determined in accordance with Sections 78B-12-205 and 78B-12-212, without the need to modify the order for:

- (a) the parent who has physical custody of the child;
- (b) a relative to whom physical custody of the child has been voluntarily given; or
- (c) the state when the child is residing outside of the home in the protective custody, temporary custody, or custody or care of the state or a state-licensed facility for at least 30 days.

In *LKL Associates, Inc. v Farley*, 94 P.3d 279, 281 (Utah 2004), the Utah Supreme Court noted, “statutes are to be construed according to their plain language.” citing *Dick Simon Trucking, Inc. v. Utah State Tax Commission*, 84 P.3d 1197 (Utah 2004). Statutes are to be interpreted in such a way as to give meaning to all their parts,

and to avoid rendering any portion of the statute superfluous. *Labelle v. McKay Dee Hosp. Ctr.*, 89 P.3d 113 (Utah 2004).

When faced with a question of statutory construction the appellate court first examines the plain language of the statute. Its analysis does not go beyond the plain language of the statute, unless the court finds some ambiguity in the language. *Olsen v. Samuel McIntyre Inv. Co.*, 956 P.2d 257, 259 (Utah 1998). Neither of the lower courts found any ambiguity in the language of the Statute. (Rec. 255, Trans. pg. 11).

The lower court's interpretation of the above Statute, in denying the father's Motion to Direct Child Support to Volunteers of America, when it is undisputed that the child has been residing with Volunteers of America and not the mother; fails to follow the plain language of Subsection (1) of the Statute, which requires that the obligations for child support follow the child.

The language of § 78B-12-108 (1) is not ambiguous. It provides that child support obligations *"are for the use and benefit of the child and shall follow the child."* The trial court erred in determining, that contrary to the plain language of subsection (1), the child support obligation in this case, is not "for the use and benefit of the child," and should not "follow the child;" but should be paid to the mother, who admittedly is no longer the primary care-giver for the child.

Subsection (1) of the Statute specifically states that the payment is for the "use and benefit of the child," not the parent. It does not require that the parent must no

longer be liable for the child's future expenses, before the child support obligation can follow the child. Furthermore, the father is also responsible for the child's future expenses; as both parents remain legally liable for the support of their child under Utah Statute. § 78B-12-105 (1) & (2) (a) - (b).

If the legislature wanted to place such a limitation on the clear mandate in Subsection (1) of the Statute, they could have easily provided that, child support obligations *do not follow the child*, but are for the *use and benefit of the parents* and are to remain with a parent, so long as that parent may remain liable for the child's future expenses, or if the child is free to visit. The Statute does not provide such a restriction nor does it list these factors as something to be determined by the court prior to following its mandate that the child support obligation *shall* follow the child.¹ The meaning of the word "shall" in a statute is ordinarily that of a command with no discretion left to the trial court. *Brendle v. City of Draper*, 937 P.2d 1044, 1047 (Ut.App. 1997).

The matter was before Commissioner Evans on the father's Motion to Direct Support Payments to Volunteers of America under § 78B-12-108 (1). It was not a trial on the Petition to Modify Custody, which was filed with the court on November 8, 2007, and served on Ms. Hansen on January 5, 2007. There was no preparation, or evidence presented, concerning the Petition to Modify Custody at the hearing, only oral

¹The court of appeals refers to these fact as if they are listed as factors to be consider before following the mandate of Subsection (1), which they are not.

argument regarding the application of § 78B-12-108 (1) and Mr. Hansen's motion that child support should be directed to Volunteers of America and not to Ms. Hansen. The Statute requires that the child support payments follow the child, it does not say anything about having to file a petition to modify first, or having to establish a change in custody first, in order to have the payments follow the child. Regardless, in this case, a Petition to Modify had been filed with the court, seeking a change in the child support consistent with the Utah State Guidelines.²

It was improper for the district court to make any ruling regarding custody of the child based on the oral arguments concerning the application of § 78B-12-108 (1); and it was improper for the court of appeals in its review to find that the mother never lost custody, based on the facts argued by counsel, but never presented through evidence; and when this was not even an issue before the court on the father's Motion to Direct Support Payments under § 78B-12-108 (1).

Finally, after the issuance of the court of appeals' Memorandum Decision in this case (July 11, 2009), the court of appeals in *Doyle v. Doyle*, 20080618-CA (Oct. 29, 2009) affirmed the district court's child support decision, even though the mother never requested such a modification in her petition. The court of appeals states, "the Utah Code

²The court could have ordered the support payments to follow the child to Volunteers of America, with the Petition to Modify pending. Rule 106 of the Utah Rules of Civil Procedures provides that temporary orders may be entered to address an immediate harm or to ratify changes made by the parties, if the modification serves the best interest of the child. *Rule 106, Utah Rules of Civil Procedure.*

further buttresses the trial court's decision," stating that "[o]bligations ordered for child support . . . are for the use and benefit of the child and *shall follow the child*." Utah Code Ann. § 78B-12-108 (1) (2008)," (emphasis in original). Therefore, after the court of appeals' decision in this case; the court of appeals appears to enforce § 78B-12-108 (1) allowing the support to follow the child without restriction.

The support payments for Jessica should have followed her to Volunteers of America under § 78B-12-108 (1), when it is undisputed that the child is no longer living with the mother, but at the Volunteers of America Transition Home.

II. THE COURTS ERRED IN APPLYING §78B-12-108 (2) TO PREVENT THE CHILD SUPPORT OBLIGATION FROM FOLLOWING THE CHILD.

The district court erred in applying § 78-12-108 (2) in this case. Statutes are to be construed according to their plain language. *LKL Associates, Inc. v Farley*, 94 P.3d 279, 281(Utah 2004); *Dick Simon Trucking, Inc. v. Utah State Tax Commission*, 84 P.3d 1197 (Utah 2004). They are to be interpreted in such a manner as to give meaning to all their parts, and to avoid rendering any portions superfluous. *Labelle v. McKay Dee Hosp. Ctr.*, 89 P.3d 113 (Utah 2004). Subsection (1) and (2) of § 78B-12-108 are independent from each other. There is not an "and" or conjunction connecting them, imposing the requirements of Subsection (2) to Subsection (1). Such a reading of the Statute would render Subsection (1) meaningless as it would add nothing to the automatic redirection provisions in Subsection (2).

The trial court's application of § 78B-12-108 (2) in denying the father's Motion to Direct Child Support to Volunteers of America, when it is undisputed that the child has been residing with Volunteers of America and not the mother, is in error and contrary to the plain language of Subsection (1) of the Statute, which requires the support obligation to follow the child.

To give meaning to all of the sections of § 78B-12-108, Subsection (2) cannot be read to prevent the child support obligation from following the child, as clearly mandated under Subsection (1). Rather, Subsection (2) is only to help facilitate the mandate in Subsection (1) by automatically shifting the direction of child support, without a court order, to certain persons or entities. There is nothing in Subsection (2) however which prevents a party from seeking a ruling from the court to direct child support payments to follow the child to another entity under Subsection (1).

The fact that Subsection (2) does not require a court order in three specific instances; in fact, implies that the court can redirect child support payments to follow the child, in other instances and in fact should order such, when necessary to have the support payments follow the child under Subsection (1). The court of appeals has subsequently held that the district court can make such an order redirecting child support under Subsection (1) even when there has been no specific request for such an order. *Doyle v. Doyle*, ¶ 21, 20080618-CA (Oct. 29, 2009).

Subsection (2) which is intended to help facilitate the shifting of the child support obligation so that it can follow the child without a court order, should not be read in such a way, as to invalidate the clear mandate in Subsection (1) that the child support obligation is to follow the child. Subsection (2) is not intended to prevent the court from redirecting the child support payments from following the child under Subsection (1).

CONCLUSION

The language of § 78B-12-108 (1) is clear. Child support obligations “are for the use and benefit of the child and *shall* follow the child.” (Italics added) The interpretation of the above Statute, by the district court in denying the father’s Motion to Direct Child Support to Volunteers of America, and its affirmation by the appellate court; when it is undisputed that the child has been residing with Volunteers of America and not the mother, is contrary to the clear mandate in § 78B-12-108 (1).

The provisions of § 78B-12-108 (2), which provides for an automatic redirection of child support to follow the child, without a court order; should not be read in such a way as to prohibit the clear mandate in Subsection (1) that the child support obligation shall follow the child. Subsection (2) should not be read, in this case, to prevent the court from redirecting the support payments to Volunteers of America for the use and benefit of the child under § 78B-12-108 (1).

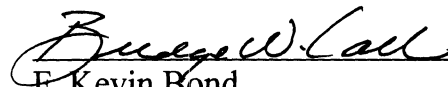
Based on the foregoing, this Court should rule that under § 78B-12-108 (1) the child support in this case, should follow the child to Volunteers of America, and not

remain with the mother; and that the automatic provisions allowed under subsection (2), without a court order, do not invalidate the clear purpose and mandate in Subsection (1) that the support payments are for the use and benefit of the child and shall follow the child.

The ruling of the district court and affirmation by the court of appeals should be reversed. It should be ordered that under § 78B-12-108 (1), the child support payments are to follow the child to Volunteers of America, in this case.

DATED this 4th day of December, 2009.

BOND & CALL L.C.

A handwritten signature in cursive script, appearing to read "Budge W. Call".

F. Kevin Bond

Budge W. Call

Attorney for Defendant/Petitioner

MAILING CERTIFICATE

I hereby certify that on the 4 day of December 2009, I did mail, first class, postage pre-paid, two true and correct copies of the forgoing, **BRIEF OF THE PETITIONER**, to the following:

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A handwritten signature in cursive script, appearing to read "Jodi Walker", is written over a horizontal line.

ADDENDUM

EXHIBIT A

.2-108

78B - Judicial Code

Chapter 12 - Utah Child Support Act

-12-108. Support follows the child.

(1) Obligations ordered for child support and medical expenses are for the use and benefit of the child and shall follow the child.

(2) Except in cases of joint physical custody and split custody as defined in Section **-12-102**, when physical custody changes from that assumed in the original order, the parent without physical custody of a child shall be required to pay the amount of support determined in accordance with Sections **78B-12-205** and **78B-12-212**, without the need to modify the order for:

(a) the parent who has physical custody of the child;

(b) a relative to whom physical custody of the child has been voluntarily given; or

(c) the state when the child is residing outside of the home in the protective custody, temporary custody, or custody or care of the state or a state-licensed facility for at least 30 days.

Renumbered and Amended by Chapter 3, 2008 General Session

EXHIBIT B

FILED
UTAH APPELLATE COURTS
JUN 11 2009

IN THE UTAH COURT OF APPEALS

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Kay Lynn Hansen,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellee,)	
)	Case No. 20080647-CA
v.)	
)	F I L E D
Steven L. Hansen,)	(June 11, 2009)
)	
Defendant and Appellant.)	2009 UT App 152

Third District, Salt Lake Department, 034900024
The Honorable Denise P. Lindberg

Attorneys: F. Kevin Bond and Budge W. Call, Salt Lake City, for
Appellant
Ann L. Wassermann, South Jordan, for Appellee

Before Judges Bench, Orme, and Davis.

BENCH, Judge:

Steven L. Hansen (Father) appeals the denial of his motion to modify the original order of support and to direct both parents to make child support payments to Volunteers of America Transition Home (Volunteers of America). Father claims that the district court erred in interpreting and applying a provision of the Utah Code requiring child support payments to follow the child. "We review questions of statutory interpretation for correctness, giving no deference to the district court's interpretation." Board of Educ. v. Sandy City Corp., 2004 UT 37, ¶ 8, 94 P.3d 234.

Father argues that the district court erred in refusing to modify the order of support because physical custody of the child had changed from Kay Lynn Hansen (Mother) to Volunteers of America when the child began residing at the transition home. Utah Code section 78B-12-108(1) requires that "[o]bligations ordered for child support and medical expenses are for the use and benefit of the child and shall follow the child." Utah Code Ann. § 78B-12-108(1) (2008). In the event that "physical custody [of the child] changes from that assumed in the original order,"

the support-paying parent must seek modification of the original order to redirect support payments unless the physical custody of the child has changed to one of three persons or entities: (1) a parent, (2) a relative, or (3) the state. Id. § 78B-12-108(2)(a)-(c). Where a parent, relative, or the state has physical custody of the child, support payments may be automatically redirected. See id.

Contrary to Father's assertion, Mother has not lost physical custody of the child. Mother remains liable for the support of the child, including the responsibility to pay school fees, buy clothing, transport her to doctor and counseling appointments, attend to her medical needs, and pay her medical expenses. Although the child may reside at Volunteers of America, the child is also free to visit Mother's home and frequently stays there.¹ Given that Mother retains physical custody, the district court did not err in concluding that Utah Code section 78B-12-108(1) does not require child support payments to be redirected to Volunteers of America.²


Mother requests attorney fees on appeal. "A party seeking to recover attorney[] fees incurred on appeal shall state the request explicitly and set forth the legal basis for such an award." Utah R. App. P. 24(a)(9). Because Mother fails to adequately set forth the legal basis for such an award, we decline to grant her request. See Advanced Restoration, LLC v. Priskos, 2005 UT App 505, ¶ 36, 126 P.3d 786 (declining to award a party attorney fees incurred on appeal because the party failed

1. Although Father made general allegations that Mother is no longer supporting the child, Father did not dispute these specific facts proffered below.

2. Contrary to Father's assertion on appeal, the district court did not err by issuing its ruling without conducting an evidentiary hearing at which Father could present evidence that Volunteers of America is a state-licensed facility. See generally Utah Code Ann. § 78B-12-108(2)(c) (2008) (allowing support payments to be redirected to "the state when the child is residing outside of the home in the protective custody, temporary custody, or custody or care of the state or a state-licensed facility"). At the hearing before the commissioner, Father's counsel conceded that "Volunteers of America is not a State agency[;] . . . it's a volunteer program that's run by private donations."


to cite either a rule of procedure or a specific statute as a basis for its request for fees).

Accordingly, we affirm.

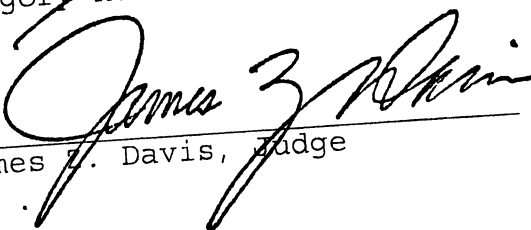


Russell W. Bench, Judge

WE CONCUR:



Gregory K. Orme, Judge



James Z. Davis, Judge

CERTIFICATE OF MAILING


I hereby certify that on the 11th day of June, 2009, a true and correct copy of the attached DECISION was deposited in the United States mail or placed in Interdepartmental mailing to be delivered to:

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Judicial Secretary

TRIAL COURT: THIRD DISTRICT, SALT LAKE, 034900024
APPEALS CASE NO.: 20080647-CA